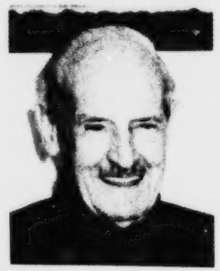
FOUNDATIONS FOR THE FUTURE OF ALBERTA'S METIS SETTLEMENTS

Report of the MacEwan Joint Committee to Review
the Metis Betterment Act and Regulations
to the Honourable J.G.J. Koziak
Minister of Municipal Affairs

MEMBERS OF THE JOINT METIS-GOVERNMENT COMMITTEE
TO REVIEW THE METIS BETTERMENT ACT



Dr. Grant MacEwan, Chairman

Myrna Fyfe, MLA -
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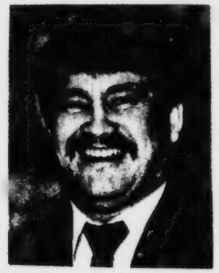

Elmer Ghostkeeper,
Federation of Metis
Settlements

Maurice L'Hirondelle,
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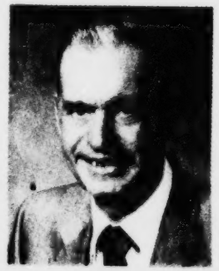

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CALGARY, Alberta
July 12, 1984

Honourable J. G. J. Koziak
Minister of Municipal Affairs
Room 224, Legislature Building
EDMONTON, Alberta

Dear Mr. Koziak;

I am pleased to present the attached report of the Joint Metis-Government Committee established to review the Metis Betterment Act and Regulations.

I would like you to know that one of the main concerns of our Committee has been the largely paternal nature of the 1938 Act. We have done our best to ensure that any proposals for a new Act would place the major responsibility for the political, social, economic and cultural development of the Settlements firmly on the shoulders of the Settlements themselves. On the other hand we have had to be aware of the current level of development on the Settlements and the expressed wishes of settlers.

The Committee has also been conscious of the sensitive nature of its task and of the fact that we had a two year mandate. Within that period of time it has not been possible to prepare a draft Bill which might in any sense be considered as a complete document. We have drawn together many ideas, some of them conflicting, some of which require a great deal more discussion with the Metis Settlements and some of which need to be evaluated in terms of the Government's position towards all Metis people in the Province both on and off the Settlements.

We have attempted to give you a working document with as much content as possible. We have found our task difficult, often frustrating, but historic in its challenge and opportunities. We trust that you and your colleagues in the Provincial Government will accept the challenge to support the legitimate ambitions of the Settlements and encourage the Settlements in turn to benefit from their opportunities.

Yours very truly,

Grant MacEwan

Grant MacEwan
Chairman
Joint Committee

This document is the unanimous Report of the Joint Government-Metis Committee to review the Metis Betterment Act and regulations under the Act.

Grant MacEwan, Chairman

Elmer Ghostkeeper, Metis representative

John Thompson, Government representative

Randall Hardy, Metis representative

Robin Ford, Government representative

INDEX

		Page
INDEX		1
INTRODUCTION		2
CHAPTER 1	BACKGROUND	4
CHAPTER 2	THE MacEWAN JOINT COMMITTEE	6
CHAPTER 3	RECOMMENDATIONS FOR A NEW ACT	9
	Structure of the Act	9
	Name of the Act	11
	Preamble	11
	Definitions	12
	PART 1 METIS SETTLEMENTS	13
	PART 2 GOVERNING BODIES	16
	PART 3 POWERS OF SETTLEMENT COUNCILS	24
	PART 4 MEMBERSHIP IN SETTLEMENTS	29
	PART 5 SETTLEMENT LANDS	34
	PART 6 FINANCIAL AND RESOURCES MATTERS	44
	PART 7 LEGAL PROCEEDINGS	52
	PART 8 TRANSITIONAL AND CONSEQUENTIAL PROVISIONS	52
	Schedule 1 of the Metis Settlements Act	55
	Schedule 2 of the Metis Settlements Act	55
	Schedule 3 BY-LAW MAKING AUTHORITY	55
CHAPTER 4	POLICY RECOMMENDATIONS	56
	1. Education	56
	2. Culture	57
	3. Social Services and Community Health	57
	4. Energy and Natural Resources	57
	5. Economic Development	58
	6. General Programs	58
CHAPTER 5	CONCLUSION	59
CHAPTER 6	APPENDICES	61
	APPENDIX 1 ORDER IN COUNCIL NO. O.C. 422/82	62
	APPENDIX 2 TERMS OF REFERENCE OF THE JOINT COMMITTEE	63
	APPENDIX 3 EXTENSION OF TIME	64
	APPENDIX 4 A NEW METIS BETTERMENT ACT: A GUIDE FOR DISCUSSION - MAY, 1984	65

INTRODUCTION

On March 31, 1982 the Lieutenant Governor in Council established a Joint Government - Metis Committee to review the Metis Betterment Act and regulations made under the Act. This document is the report of the Committee.

The report is divided into 5 chapters as follows:

Chapter 1: Background

This chapter provides a historical setting and context for the existing Metis Betterment Act. It deals very briefly with the history of the Metis in Alberta and discusses the work of the Ewing Commission in the 1930's and explains how the new Act is designed to provide a solid foundation for the future of Metis settlements in Alberta.

Chapter 2: The MacEwan Joint Committee

This chapter describes the composition, mandate and work of the MacEwan Joint Committee.

Chapter 3: Recommendations for A New Act

This chapter makes recommendations for legislation and, where appropriate, gives the rationale for the recommendations.

Chapter 4: Policy Recommendations

This chapter makes recommendations for new policies to be implemented and revisions to existing policies as they relate to Metis Settlements and the Metis people on the settlements.

Chapter 5: Conclusion

This chapter provides the major conclusions of the Committee.

Chapter 6: Appendices

This chapter includes background information referred to in the report.

The recommendations of the Committee are wide ranging and far reaching. The Committee recognizes that, in order to implement the Committee's recommendations, at least four kinds of action will be required:

(a) continuing on-going communication with Metis Settlements to refine the proposals that have been made in this report;

(b) the enactment of new legislation in the form of an Act and regulations;

(c) the enactment of new by-laws by the Metis settlements to complement the new legislation;

(d) establishment of or revisions to existing Government policies and programs.

Areas for policy consideration, described in more detail in the report, include social, cultural, educational and economic matters. The Committee considers it of particular importance that the Government ensure that services available to all Albertans are also available to Metis on settlements, and that in providing those services, special recognition be given to the Metis history and culture.

The Committee recognizes that there are certain areas in its report where further work is required and where, at this stage, it would not be constructive or appropriate to make recommendations. Those areas are clearly outlined in the text of the report. The Committee urges that further discussion on those issues take place between the Government and the Metis settlements in whatever forum is most suitable.

CHAPTER 1
BACKGROUND

The relationship between the Metis and the Provincial Government of Alberta is unique in Canada. Half a century ago the Metis of western Canada were in a desperate condition. The Great Depression had left many Metis landless and destitute. At the prodding of the Metis leaders of the time the Provincial Government recognized the problem and set up the Ewing Commission to work with the Metis to come up with a solution. The result of that Commission's work was the passage in 1938 of "An Act Respecting the Metis Population of the Province". The Act made it possible to establish Metis Settlement Associations and set aside more than a million and a quarter acres of land, and the unique Alberta relationship began.

The past half century has proved the worth of that relationship. The landbase provided the Metis by the Settlement Areas alleviated some of the worst hardships and provided a homeland for the preservation of Metis culture and values. The Settlements have provided Alberta Metis with an opportunity to, with much hard work, make a living and support a family on Metis land. The standard of public services and personal well being has continually increased. Along with the improvements in physical well being, the Metis settlers have increased their self-reliance and self-determination.

The advantages flowing to the Metis from the establishment of the Settlements have been great. However the legislative framework set up to solve the problems of the 30's is strained by the realities of the 80's. Legislative changes are now required to encompass the new reality on Metis Settlements. The legislated system of control by the Provincial Government has in practice ended. Metis Settlements are moving quickly toward local self-government and new legislation should reflect this. Avenues of appeal and final decisions on strictly local issues of greatest importance to the Metis settlers must stay with the Metis settlers whom the decisions most affect.

The second problem that the new legislation must address is the security of land. The land has always been of paramount importance to Metis people. The existing legislation has been interpreted by previous governments as providing the power, by Order in Council, to remove lands set aside for the Metis. This mechanism was used in the early 1960's to remove all lands set aside for the Wolf Lake Metis Settlement Association. The insecurity presented by this possibility casts a pall over Metis land development efforts. In order to provide a solid foundation for the Metis future, title to the Settlement land should be vested in the Metis settlements by legislation.

The Committee believes that its recommendations provide a framework for dealing with the paramount concerns of local self-government and land security. It is hoped that the framework will provide as solid a base for Metis development as the framework recommended by its predecessor of a half century ago - the Ewing Commission.

CHAPTER 2
THE MacEWAN JOINT COMMITTEE

(a) Establishment and Mandate

The Joint Government-Metis Committee to review the Metis Betterment Act and regulations was established by the Lieutenant Governor in Council by Order in Council number O.C. 422/82 dated March 31, 1982. (See Appendix 1 of this Report.)

The Order in Council established the Committee in an advisory capacity to make recommendations to the Minister of Municipal Affairs in order to allow for political, social, cultural and economic development on the Metis Settlements.

The Committee originally consisted of the Honourable Dr. Grant MacEwan as a Chairman, acceptable to both the Federation of Metis Settlements and the Government of Alberta; Mrs. Myrna Fyfe, M.L.A.; Mr. Elmer Ghostkeeper, President of the Alberta Federation of Metis Settlements; Mr. Maurice L'Hirondelle, Past President of the Federation; and Mr. Robin Ford as a representative designated by the Minister of Municipal Affairs. Following the November 1982 Provincial General election, Mrs. Fyfe was replaced by Mr. John Thompson as the M.L.A. representative on the Committee (O.C. 482/83, June 8, 1983). In January 1984 Randall Hardy was appointed as a representative of the Federation of Metis Settlements replacing Mr. L'Hirondelle.

The Order in Council established that the deliberations and recommendations of the Committee should be without prejudice to certain matters before the Courts, namely Maurice L'Hirondelle et al and Her Majesty the Queen in right of Alberta as represented by the Minister of Social Services and Community Health; also the Keg River Settlement Association et al and Her Majesty the Queen in right of Alberta as represented by the Minister of Social Services and Community Health.

The Order in Council also established that the Minister of Municipal Affairs would provide Terms of Reference for the Committee, which he did by his letter of April 2, 1982 to Dr. Grant MacEwan and all Committee Members. (See Appendix 2 of this Report.)

A final report and recommendations were to be submitted to the Minister of Municipal Affairs by April 1, 1984. This date was subsequently amended to June 30, 1984. (Appendix 3, Letter of the Minister of Municipal Affairs)

The Committee held its first formal meeting on April 2, 1982.

(b) The Work of the Committee

Briefly described, the work program of the Committee outlined by the Minister was completed in the following way:

1. Background Material

With considerable assistance from the Alberta Federation of Metis Settlements, Committee members read a great deal of material about the Settlements, the history of Metis people and the Ewing Commission. Of particular relevance was the paper on 'Metisism' prepared by the Federation in 1982 for the constitutional conferences.

2. Detailed Examination of the Metis Betterment Act and Regulations

A summary of the Committee's review of these documents is contained in Committee Minutes dated April 2, 1982.

3. A Review of the Current Situation on the Metis Settlements

The Committee undertook this review through discussion and by visits to all eight Settlements between May and September 1982. A document entitled 'A Review of the Current Situation on Metis Settlements' was approved at the Joint Committee meeting on July 11, 1983.

4. Examination of Future Alternatives for Metis Settlements and

5. The Development of Models

Much of the ground work in this area was done at a series of Metis Settlement All Council meetings and Federation Board meetings between December 1982 and December 1983. The Federation prepared a booklet entitled "A New Metis Betterment Act: A Guide for Discussion". First Draft: December 1982; Second Draft: May 1983 (see Appendix 4 of this Report). This booklet formed the basis for the Committee's discussion of alternatives and models. A Summary of Discussions was agreed to by the Committee on January 20, 1984.

6. The Establishment of Guiding Principles for New Legislation

Based on background reading and discussion, field visits and extensive consultation with Metis Settlement Councils, Guiding Principles for a new Act and Regulations were established at a Committee meeting on December 1, 1983.

The Guiding Principles were subsequently modified during later detailed discussions of proposed legislation.

7. Review of Draft Legislation

The Committee discussed and reviewed proposals for legislation culminating in its recommendations in chapter 3 of this Report.

8. Final Report

The final report of the Committee was agreed by consensus at Committee meetings on June 18 and July 12, 1984.

NOTE: Copies of the Minutes of the Committee are filed with libraries of the Department of Municipal Affairs and the Federation.

CHAPTER 3
RECOMMENDATIONS FOR A NEW ACT

The Committee recommends that legislation be enacted to implement the proposals described in this chapter.

The proposals are described in a two column format, the left hand column describes the proposed legislation and the right hand column explains or describes the proposal.

The proposed legislation would repeal and replace the existing Metis Betterment Act and would also require a complete repeal and rewriting of most regulations under the existing Metis Betterment Act.

Structure of the Act

Preamble and Name

Definitions - This section defines words used later in the Act and avoids unnecessary repetition.

Part 1 Metis Settlements - This Part establishes the existing settlements as corporate entities and identifies the land set aside for each settlement.

Part 2 Governing Bodies - This Part establishes that each settlement will be governed by a council consisting of five members elected by the people. It also creates a local Senate of Elders on each settlement with jurisdiction in respect of land allocation and membership.

Part 3 Powers of Settlement Councils - This Part says what by-law making powers a settlement council should have.

Part 4 Membership - This Part sets out the requirements for membership in the settlements and the appeal procedures when membership is denied or terminated.

Part 5 Settlement Lands - This Part establishes that the settlements own settlement land and that the parcels within the settlement will be brought into the land titles system. It provides for the holding of a certificate of occupancy by individual members and outlines the limits on the interests other persons can have in settlement lands.

Part 6 Financial and Resource Management Matters - This Part deals with the financial rules applying to the settlements including the requirements for borrowing money and the creation of a Metis Settlements Resources Trust Fund. It also provides for the creation of a body that would manage the Trust Fund.

Part 7 Legal Proceedings - This Part provides some rules on the kinds of legal proceedings that could be brought against the settlements and the restrictions on liability of Council members.

Part 8 Transitional and Consequential Provisions - This Part would provide for a transition from the existing Act to the new Act to help resolve any problems during the changeover.

Proposed Legislation	Explanatory Note
Name of the Act	
Metis Settlements Act	This title is one that was proposed by the Alberta Federation of Metis Settlements and is appropriately descriptive.
Preamble	
WHEREAS the Metis were aboriginal inhabitants of the Province of Alberta at the birth of the Province; AND WHEREAS the Metis people have played and continue to play a distinct role in the history and culture of the Province of Alberta; AND WHEREAS the lands set aside for the Metis settlements will provide a secure foundation upon which future generations may rely and develop; AND WHEREAS it is necessary to strengthen and renew the role of Metis settlements in the Province of Alberta and the role of the Metis on them; THEREFORE BE IT ENACTED	The Committee recognises that preambles are not usual in recent legislation. However,in view of the importance of the proposed legislation in the history of the Metis people and the fact that the Act will provide a foundation for the future, the Committee recommends that a Preamble be included. It should be recognized that this proposed Preamble may impact the Alberta Government's constitutional position and may have retroactive implications.

Definitions

This section defines words commonly used in the proposed legislation. The definitions save lengthy repetition in the rest of the draft.

1. In this Act:

"adult member" means a member who is at least 18 years old;

The recommendations of the Committee draw a distinction between "members" of the settlement who include both persons admitted as members of the settlement by a council and Metis children under 18 years old residing with a member, and "adult members" who are members admitted by the council who are at least 18 years old.

"council" means the governing body of a settlement, composed of the councillors and the chairman;

"chairman" means the person elected as chairman of a council by members of the council;

"member" means an individual who is a member of a settlement;

"Metis" means an individual of aboriginal ancestry who identifies with Metis history and culture;

The Committee's proposed definition provides a simple definition of "Metis" establishing a two part "test", namely, evidence of aboriginal ancestry and a requirement for the person to identify with Metis history and culture.

This definition evolved during Committee discussions and was not expressed in this form until the final meeting of the Committee on June 18, 1984.

"Minister" means the Minister of Municipal Affairs;

"settlement" means the corporate entity established as a settlement by or in accordance with this Act;

"settlement area" mean the geographic area of a settlement;

"Trustees" means the Trustees of the Trust Fund;

"Trust Fund" means the Metis Settlements Resources Trust Fund established under this Act.

The question of the corporate status of settlements is a basic issue in current litigation.

PART 1
METIS SETTLEMENTS

This Part establishes Metis Settlements as legal entities and will prescribe their boundaries by a Schedule to the Act. The Part also deals with possible boundary changes and new settlements being established.

2(1) The Act will

(a) establish the existing settlements as corporate entities composed of the members of the settlement, and give them their corporate name, in accordance with Schedule 1 of the Act;

2(1) The 8 existing settlements would continue but with names and boundaries specified in the Act. Some of the commonly used names would be changed to names that settlements consider more appropriate.

The settlement area boundaries would be described in a manner similar to the Electoral Boundaries Commission Act schedules.

(b) establish the boundaries of each settlement, in accordance with Schedule 2 of the Act.

This proposal will require the outer boundaries of each settlement area to be surveyed.

(2) Title to land in the settlement area will be vested in the settlement.

(2) See Part 5 respecting settlement lands for the nature of the vesting. Transitional sections of the Act will protect existing rights and interests.

(3) Subject to the Act, a settlement should have the capacity and the rights, powers and privileges of a natural person.

(3) Similar to the powers of a corporation under the Business Corporations Act.

3 Settlement area boundaries will only be amended by the Lieutenant Governor in Council and then only if

The Committee recognizes that some mutually acceptable form of census will be required in order to determine if 90% of the adult members have voted.

(a) the council of the settlement concerned, by resolution, requests the change;

(b) 90% of the adult members of the settlement vote in favour of the change, and

(c) a majority of the other settlement councils, by resolution, agree with the change.

4 New settlements might be created by the Lieutenant Governor in Council if

(a) the Minister receives a petition to establish a settlement signed by at least 50 Metis who are at least 18 years old and who are resident in the general area of the proposed settlement area, and

(b) a majority of the settlement councils, by resolution, support the petition.

4. The Committee views this section as important to give the Government flexibility in future years. Furthermore, any comprehensive resolution of issues between the Metis and the Government may involve a variety of matters one of which could include a use for this section.

5(1) If the Government agrees to establish a new settlement, the Lieutenant Governor in Council would, by regulation,

(a) establish the settlement and prescribe its name;

(b) define the settlement area;

(c) provide for land disposition similar to the other settlements;

(d) provide for elections or appoint the first council;

(e) make whatever other arrangements that are necessary to make the new settlement operational.

There may need to be other provisions required in the legislation to get the settlement "off the ground" e.g. financial provisions.

(2) Upon its establishment a new settlement would automatically become a corporation with the same powers and duties as the other settlements.

PART 2
GOVERNING BODIES

This Part provides for the establishment and composition of the bodies that will govern the settlement.

6 The governing body of each settlement is to be a council composed of 5 elected adult members to be known as "councillors".

7 Councillors would be elected by adult members under regulations made by the Lieutenant Governor in Council based procedurally, in part, on the Local Authorities Election Act.

7 See section 9 of the draft for the kind of regulation that could be made for elections of councillors, and for elections to the Senate of Elders.

8(1) Each council would elect each year from among the councillors a chairman.

8. It is intended that the chairman be responsive to the Council and if he loses the confidence of council, that he be able to be removed at any time by a vote of the majority of the other councillors.

(2) The chairman of the council may be voted out of office, as chairman, by the other councillors at any time.

9 The Lieutenant Governor in Council may make regulations:

(a) governing the same or similar matters that are contained in the Local Authorities Election Act for elections to the council or to the Senate of Elders;

(b) adopting all or part of the Local Authorities Election Act;

(c) providing for staggered terms of office of councillors and the length or lengths of those terms;

(d) respecting the conditions to be met before a person is entitled to vote at elections for council and the Senate of Elders;

9. The Committee is satisfied that certain aspects of the old election procedure on Metis Settlements (A.R. 634/57) should be retained (for example, staggered elections). Other provisions need revising and updating.

The staggered election system proposed would ensure 2 councillors are elected each year. The person receiving most votes would be elected for 3 years, the runner up, 2 years.

Special provisions would be required to start the staggered system. The following are proposed:

- In the first year after the Act comes into effect, an election is held for all 5 councillors. The person getting the most votes is elected for three years, the persons with the second and third most votes are elected for two years, and the persons with the fourth and fifth most votes are elected for one year.

(e) governing who may be a candidate at elections for the Senate of Elders and council and the conditions to be met before a person is entitled to stand as a candidate;

(f) governing the circumstances under which a person becomes disqualified as chairman or councillor or member of the Senate of Elders.

- In every year after that an election is held to fill two Council vacancies. The candidate receiving the most votes is elected for three years and the candidate elected receiving the second most votes is elected for two years. At each election, every voting adult member can vote for two councillors, i.e. mark his ballot with two x's.

10(1) A member of council would lose his membership on council if he committed a "disqualifying act" and a special general meeting held under this section votes to disqualify him.

(2) The "disqualifying acts" would be specified in regulations made by the Lieutenant Governor in Council.

(3) When a council member is charged with committing a disqualifying act, a special general meeting of the Settlement can be called to determine whether or not the member should be disqualified.

The basic "disqualifying acts" would be

(a) conviction of certain criminal offences (similar to s. 29(1)(a) of the Municipal Government Act;

(b) cessation of membership;

(c) absence from 2 consecutive council meetings without cause;

(d) certain matters involving conflict of interest involving the councillor or his family.

(4) The special general meeting can be called either by

(a) a resolution of council,
(b) a resolution of a general meeting, or
(c) a resolution of the Senate of Elders.

(5) At the special general meeting, the chairman of the Senate will preside and all parties given an opportunity to present their evidence.

(6) On hearing the evidence, the special general meeting can pass a resolution disqualifying the member of council, and in that event, the position becomes vacant.

Certain other of the disqualifying provisions of section 29(1) of the Municipal Government Act would also apply, e.g. bankruptcy.

It is not envisaged that contracts with the settlement would be a "disqualifying act" if the councillor declared his interest, did not vote, and met other conditions.

The purpose of this section is consistent with the general philosophy behind the proposed Act that issues on the settlement should be resolved by the members of the settlement.

11. Vacancies on council should be filled by appointment made by the council until the next annual election.

Under the proposed election system there will be elections every year. To avoid unnecessary expense it is proposed that appointments be made to fill vacancies until the next annual election when an election to fill that vacancy would be held.

Senate of Elders

12(1) A Senate of Elders is established for each settlement.

12. Elders in the Metis culture have long played an important role in the settlements.

(2) Each Senate of Elders shall be composed of 5 elected adult members who shall hold office for 5 year terms of office, one member being replaced each year.

(3) Special provisions will be required for the first senate, to get them on to a 5 year rotation.

(4) The retiring member of the Senate of Elders would be replaced annually by a vote of the adult members of the settlement at the same time the election for councillors is held.

(5) Each Senate of Elders shall elect a chairman annually from among the members of the senate.

13 A person could not run for membership on the Senate of Elders and on the council.

14 Each Senate of Elders shall

(a) establish its own rules of procedure for the conduct of its business;

(b) meet at the call of the chairman.

The Committee proposes that the influence and role of the elders be recognised in the legislation in order to provide an involvement in appeals (without involving the Minister or Government) by establishing, for each settlement, a Senate of Elders with jurisdiction in respect of membership and land allocation issues.

A Senate of Elders may act as an adviser to a council on other matters.

It is proposed that members of the Senate of Elders be elected at the same time using much the same procedure as would apply for councillor elections.

It is proposed that regulations made by the Lieutenant Governor in Council would provide:

- At the first election following the passing of the legislation, the 5 senators would be elected. The candidate with the most votes being elected for 5 years, the one with the next most votes being elected for 4 years, etc.

- Thereafter, each year one senator would be elected for a 5 year term.

The Senate is viewed as a unique institution established to reflect Metis self-governing traditions and as such should not be tied to formal procedures that might interfere with the traditional approach.

15(1) In accordance with the Act, each Senate of Elders would have jurisdiction to advise and recommend decisions about:

(a) membership in settlements;

(b) land allocation to adult members;

(c) other matters affecting the settlement or its affairs as are determined by the council.

(2) The Senate of Elders, at the request of council, may act as an adviser to the council in respect of anything affecting the settlement or its affairs.

16 The same rules concerning eligibility to run for the Senate of Elders and disqualification that apply to councillors would also apply to senators.

Conduct of Councils

17(1) Each council shall name a place as its settlement office.

(2) Minutes of council meetings should be kept and copies retained in the settlement office and filed with the Trustees.

The Senate functions primarily as an appeal body that will provide sober second thoughts and advice to the council on the critical questions of land allocation and membership. It is felt that the needs of justice can be met in the vast majority of cases by this simple process without bringing into play the somewhat cumbersome procedures of the Courts.

18(1) Except when the Act otherwise provides, the powers and duties given to or imposed on a settlement must be performed by the council.

(2) A council may exercise and perform its powers and duties by resolution or by-law.

(3) Except when otherwise provided, resolutions and by-laws must be approved by a majority vote of the members of council present at a council meeting.

18. The Committee considers that regulatory matters, taxation and major community projects are the major matters in respect of which by-laws will be required. Most other council functions would be performed by resolution.

19 Jurisdiction of a council is confined to the settlement area unless this or any other Act confers additional jurisdiction.

20 Except when otherwise provided, by-laws and resolutions that are inconsistent with this or any other Act or regulations under the Act are invalid to the extent of the inconsistency.

21 By-laws must be under the seal of the settlement and signed by the chairman or person presiding at the meeting and the settlement secretary.

22(1) By-laws must have 3 readings

(2) After second reading but before third reading every by-law must be presented to a general meeting of the adult members of the settlement who must approve it before it is considered by council for third reading.

The General Meeting plays an important role in local government on the Metis settlements. The communities are small and generally like to decide all major issues by an open meeting at which all members have a vote. This provision would legislate the current common practice.

23(1) A council may impose penalties for contravention of by-laws and should be able to prescribe the same kinds of penalties as provided in section 110 of the Municipal Government Act.

(2) Fines should be paid into the account of the settlement in whose area the offence was committed.

24 A council may appoint any committees, boards, commissions, associations or other organizations considered necessary, and delegate any power except the power to make by-laws or resolutions.

Annual Meeting

25 The council shall call an annual meeting of the members of the settlement to discuss matters respecting the settlement.

PART 3
POWERS OF SETTLEMENT COUNCILS

This Part describes the basic by-law making authority of settlement councils.

Division 1
General By-laws

26(1) A council may pass by-laws that are considered necessary

(a) for the peace, order and good government of the settlement;

(b) for promoting the health, safety, morality and welfare of residents of the settlement;

(c) for the protection of life or property.

(2) In addition to the general power to make by-laws under subsection (1) the council can make by-laws on the subjects described in the Schedule 3 of the Act.

Schedule 3 will enable the council to pass by-laws on traditional matters under municipal jurisdiction, for example, procedural by-laws, by-laws regulating disorderly conduct, public health, dilapidated buildings, land use and planning.

Division 2
Hunting, Fishing, Trapping, Gathering

27(1) A settlement council has exclusive legislative authority to make by-laws respecting

(a) hunting;
(b) fishing;
(c) trapping;
(d) gathering.

(2) A council may be granted exclusive legislative authority in other areas.

27. The powers given council in the areas of hunting, fishing, trapping and gathering are extensive. Without them it would be very difficult for a settlement to preserve the land based underpinnings of their culture. Under existing legislation the settlements already have broad powers in these areas, with the exception of fishing. The regulation of fishing is within Federal jurisdiction. The policy of the Provincial Government is, however, to support the delegation to Metis settlements the right to regulate their own fishing in the lakes and streams within the settlements. Control of the use of these culturally important resources is considered imperative by the Metis.

In recognizing the special nature of Metis settlements it may be desirable to provide legislative freedom in other areas. This is a matter for further discussion between the Government and Metis councils.

Division 3
Roads and Highways

28 There is a need to clarify the jurisdiction and responsibility of settlement councils in respect of roads and highways with appropriate guarantees of public access to numbered highways.

28. The Committee considers that detailed negotiations with respect to roads and highways should be conducted between the Government and the Metis Settlements within the general context of the Committee's recommendation. It is not intended that the Government should remove its recently established Alberta Transportation Metis Road Program.

Division 4
Natural Resources

29 In this Division, "non-renewable natural resources" means mines and minerals; gravel, clay and marl.

30(1) Subject to Provincial legislation of general application, the Trustees may, by resolution, establish a Resources Development Policy in respect of the following:

(a) the regulation, control and development of non-renewable natural resources in the settlement areas;

(b) the sale, lease or other disposition of non-renewable natural resources in the settlement areas;

(c) terms and conditions under which non-members may become entitled to explore for or develop non-renewable natural resources in the settlement areas;

This Division must be read in light of section 20 which provides that by-laws must be consistent with other Acts or regulations of general application and are invalid to the extent of any inconsistency.

These provisions consequently apply an additional regulatory framework directed at the particular local concerns.

The existence of one common Trust Fund for all settlements mandates a common resource development policy that provides for, among other things, the distribution of surface rights compensation monies between occupants, leasees, settlements and the Trust Fund. It is felt that the simplest way in which to effect a common policy is along the lines of the Planning Act which leaves the by-law making power at the local level but provides a framework in which by-laws in a region must fit.

(d) environmental protection in the course of exploration or development of non-renewable natural resources;

(e) the benefits to be derived as a result of exploration or development of non-renewable natural resources and the distribution of those benefits.

(2) A Resources Development Policy Resolution may only be established by the Trustees if:

(a) the resolution is passed by a resolution approved on 3 occasions by the Trustees, not more than 2 of which could occur at the same meeting, and

(b) between second and third approvals the resolution is also approved by at least 70% of the councils who represent at least 70% of all adult members.

31(1) A council may make a Resources Development By-law which shall contain at least the following provisions:

Since the distribution of benefits derived from the development of the natural resources of the settlement areas is of concern to all settlements the establishment of the policy in this regard is modelled along the lines of the amending formula of the Canadian Constitution. It provides for the passage of a policy only when there is very clear evidence of support from the settlements with a clear majority of adult members. Council voting is weighted in accordance with population on the settlement.

(a) the terms and conditions under which non-members may become entitled to explore for or develop non-renewable natural resources from the settlement area;

(b) any other matters required to be included in the by-law by the Trustees Resources Development Policy Resolution.

(2) A by-law under subsection (1), in addition to other requirements of the Act, shall not be given third reading unless the Trustees agree that it complies with a Trustee Resource Development Policy Resolution referred to in section 30(1).

This provision ensures that local by-laws are consistent with the common Resource Development Policy established by the Trustees.

( ) If a council does not make a Resource Development By-law the Trustees may pass a resolution establishing a temporary resources development by-law for the settlement which has the same effect as a by-law, but only remains in effect until the council enacts its own by-law.

This parallels the provisions of the Planning Act respecting land use by-laws and ensures that there is a Resources Development By-law in some form in force in every settlement.

Timber

32 A council should be able to make by-laws respecting timber and its disposition.

32. This by-law would be similar to the existing regulation making authority of the Lieutenant Governor in Council

Division 5
Assessment and Taxation

33 The settlements should be given powers to assess and tax.

33. Present Alberta Regulation 113/60 does provide for the taxation of settlements on the basis of a standard assessment. Although the Committee believes that there has been progress on "user pay" concepts this whole issue requires more time for discussion.

The settlements have indicated their agreement with this recommendation, but have asked that its application remain flexible pending the outcome of the subsurface rights legal action.

PART 4
MEMBERSHIP IN SETTLEMENTS

This Part provides for settlements to control membership and the responsibility of members on settlements.

34 Every Metis child of a member, who is residing with a member of the settlement, is a member.

Under the present Act, only adult residents of the settlements are formally considered as members. The Metis would like to see their children also considered as members of the settlement to reflect the reality of daily life, since the children are active participants in developing the settlement.

35 A Metis child retains membership until the age of 19 unless, in the preceding 12 months, his application for membership is rejected.

36 Once a Metis child becomes 18 years old he may apply to become an adult member.

37 A person

(a) who is a Metis;

(b) who is at least 18 years old, and

(c) who has

(i) previously been a member of a settlement for at least 6 months, or

(ii) resided in Alberta for at least 5 years preceding the date of his application for membership

may apply for membership in a settlement in accordance with the by-laws.

37. This section reflects the current regulations with two modifications:

- the minimum age is reduced from 21 to 18;
- it allows previous members who have been outside Alberta to return home to the settlement.

The first change reflects the general change in the definition of the age of majority since the previous legislation was passed. The second change is to provide for a number of difficult situations that have developed where a family that had spent most of its life on a settlement would move to another province in hopes of finding work and when unable to do so would not be legally entitled to return to the settlement.

38(1) The council shall consider every application for membership made to it.

(2) If the council is satisfied that an applicant meets the criteria for membership and that the application should be granted the council shall approve the application.

(3) If the council is not satisfied that an applicant meets the criteria or that the application should be granted the council shall notify the applicant of its decision and that he has a right to appeal.

38. Several settlements currently have a freeze on membership. This is an issue which needs to be addressed in order to avoid any suggestion of special treatment for existing settlers.

39(1) A person whose application for membership is refused may, within 30 days of receiving the council's decision, appeal for a hearing before the Senate of Elders and the council.

39. This section attempts to capture in legislation the traditional role of the Senate on a settlement. This role is basically one of listening and counselling. By being free of the pressures of day to day duties, the Senate is able to provide impartial input to council decisions. The process envisioned would not enable the Senate to override the Council on an appeal, but would ensure that the appellant receives a second hearing and the council hears the advice of the Senate.

(2) On receipt of an appeal the Senate of Elders and the Council shall, within 30 days, convene a joint meeting to consider the appeal.

(3) At the joint Senate of Elders and council meeting the appellant presents his appeal.

(4) After the hearing the Senate of Elders may advise or make recommendations to the council in any manner it considers appropriate.

40 Following its joint meeting with the Senate of Elders, the council shall reconsider its decision and then announce, within 30 days, the results of its reconsideration before a joint meeting of the Senate of Elders and the council, and in the presence of the appellant if he wishes to attend.

The requirement that the Senate be present when the council announces its decision ensures that the advice of the Senate will not be misunderstood. It is felt that this is a more practical approach than requiring written reasons from both bodies.

Termination of Membership

41 A council may terminate the membership of a member if

(a) the member has ceased to be a resident of the settlement area,

41. Current legislation empowers the Minister to withdraw a person's membership for conduct detrimental to the general well being of the settlement. This provision with others, enables the council by by-law to replace many of the regulatory duties of the Minister to provide for the control of detrimental conduct.

(Alberta Regulation 110/60 s. 5 presently provides for absences from the settlement and the Committee considers that a similar provision should be retained).

(b) the member ceases to be a resident for 12 consecutive months without the written consent of the council, or

(c) the member fails to comply with the duties of a member imposed by this Act or the by-laws of a council,

and the member concerned is given an opportunity to make representations to council.

42 The same appeal rights to a joint meeting of the Senate of Elders and Council concerning termination apply as they do for application for membership.

Duties of Adult Members

43 Within such time as is prescribed by by-law, an adult member should be able to

(a) apply for an allocation of land in the settlement area;

In the process of allocating land some recognition should be given to the fact that not all Metis settlers are farmers. This recognition should allow for the better use of the land base of the settlement.

(b) take up residence in the settlement area;

(c) improve, cultivate or break land in the manner and to the extent described in the by-law;

(d) perform such other work or duty as is prescribed by by-law.

PART 5
SETTLEMENT LANDS

Division 1
Title

44(1) The fee simple title to the surface of all land in the settlement area should be vested in the settlement.

(2) Issues relating to the ownership or benefits from mines and minerals are presently before the Courts. The settlements and the Government have, so far, agreed to let the Courts resolve these matters.

(3) Subject to subsection (2), natural resources should be vested in the settlements.

This Part provides for the vesting of lands in the settlement and provides for a means of land holding within the land titles system.

The Metis Settlement Areas were originally created to provide a land area in which the Metis could develop economic self-reliance while preserving their cultural ties to the land through the maintenance of traditional pursuits such as hunting, fishing, trapping and gathering. If the new Act is to maintain this objective, and the Committee believes that it should, the settlements will need to be able to maintain clear domination over these traditional pursuits within their areas. Legal title to all lands will assist in this regard and be consistent with the initial purpose for which the lands were set aside.

The benefits from resources such as sand, gravel and timber are currently paid to the Metis Population Betterment Trust Fund.

(4) The bare title to all public highways, roads, streets, road allowances, lanes, alleys and bridges, except as far as is excluded by a special Act or an agreement, should be vested in the settlement.

45(1) The Registrar of Titles should be directed by the legislation to issue titles to the settlements in accordance with this Act.

(2) Each settlement title should be endorsed with the following memorandum on the face of the title:

1

"Metis Settlement Land - not to be disposed of without written consent of the Minister of Municipal Affairs".

(3) The Minister would only give consent to a disposition of settlement land if he was satisfied that all the requirements for a boundary change had been complied with.

This recommendation is not intended to interfere with highway rights of way (see proposed section 60(2) of this draft) nor to limit the need for clarification over matters of jurisdiction and responsibility referred to in section 28 of this draft, nor to establish a right to compensation for roads and highways established in the past.

45(1) Bringing the settlement areas within the operation of the land titles system will require that all settlement areas be surveyed and subdivision plans of existing village lots be filed with the Northern Alberta Land Titles Registry. If questions arise with respect to lot or parcel lines they can be dealt with by the Senate of Elders and council in the same manner as land allotment appeals. Specific provisions in this regard will probably be required in the Legislation.

The paramount concern of the Metis settlements is the retention of a land base for the preservation of their culture. Because of the unhappy experience of the Metis with the loss of land on the issuing of scrip there is a great concern among the Metis that the acquisition of title could again result in the loss of land. To ensure that land can only be transferred out of a settlement on the clearest expression of general accord, the Committee recommended very strict provisions for the change of boundaries of a settlement area. Those provisions coupled with the provisions of this section prohibiting transfer while the land is within the settlement area should provide the protection from loss of land sought by the Metis.

46 Title to lands in a settlement area may not be transferred except in the case of boundary changes which can only be accomplished in accordance with this Act.

The endorsement on title is recommended to protect against an inadvertent transfer of title to a bona fide purchaser for value without notice, which could in turn trigger provisions of the Land Titles Act creating possible claims to rights by the transferee.

Initial discussion of these ideas with land titles has been encouraging.

Division 2

Interests in Settlement Land

47 There should be established by the Act two interests in settlement land as evidenced by:

(a) a memorandum of allocation, or

(b) a certificate of occupancy.

Memorandum of Allocation

48(1) A memorandum of allocation will

(a) provide the holder with the right of exclusive occupancy to a parcel of land;

(b) be issued for not more than 5 years (renewable by council);

48. In the present regulations under the Metis Betterment Act the holder of an allocation has the right of exclusive occupancy on a temporary basis while making the "homesteading" improvements required for a certificate of occupancy.

Present regulations provide members with land on a provisional basis until they can meet "homesteading" type of conditions which then entitle settlers to receive a certificate of occupancy. The Committee believes these types of conditions should be preserved in the new Act but that the conditions are best left to the settlements to establish and amend as conditions dictate.

(c) continue until conditions for the issuance of a certificate of occupancy prescribed by by-law have been met by the holder or until the holder fails to meet the conditions and the temporary allocation expires.

(2) A memorandum of allocation does not grant the holder the right to lease or in any other manner assign a sub-interest in all or part of the land to another member or any other person.

Certificate of Occupancy

49(1) A certificate of occupany gives the holder the following rights in respect of land for which it is issued:

(a) right to exclusive occupancy as long as the holder is a member;

(b) the right to transmit the interest by will or other testamentary disposition;

(c) to lease to another member for not more than 5 years, including rights to renew, subject to the prior approval of the council.

49. These provisions define the basic characteristics of the certificate of occupancy. The certificate conveys the highest form of title that an individual can have to land on a settlement. Summarized, the provisions

- provide for one certificate per parcel, and maintain the existing proviso that the certificate does not grant the holder a right to mines and minerals
- enables the holding of land as joint tenants or tenants in common and creates the same presumptions in this regard as apply off the settlement. At present there is some confusion in this regard;
- protects the holder of a certificate from arbitrary cancellation. Other provisions of the recommendations provide for the definition of "cause";

(2) A certificate of occupancy

(a) will be in a standard form prescribed by the Trustees;

(b) may only be issued by the council in which the land is located;

(c) must be endorsed against the settlement title but if it is not so endorsed it acts as a memorandum of allotment;

(d) may be cancelled by the council in accordance with this Act;

(e) does not convey any right to or interest in mines and minerals, timber, gravel or other natural resources.

50 While a member cannot dispose of his certificate to another person, except by will, he can surrender it to the council who may then reissue it to another member as a result of a tripartite agreement between the two members and the council.

- ensures that within the settlement, land can be passed on to heirs as it can off the settlement. The requirement is necessary to enable the kind of commitment to making long term improvements to the land that is possible off the settlement. In the case where no will is made it would duplicate existing legislation (A.R. 110/67, s. 10 and s. 12) with the council playing the role currently played by the Minister.
- provides for a standard form of certificate to ensure that the same bundle of rights accrues to the holder on each settlement;
- provides for the certificate to operate as a temporary allotment until registered on title;
- grants the certificate holder the right to lease land while maintaining council control over land use in the settlement. It might be considered similar to the traditional requirement of a lessor that a lease not be assigned without consent.

51 A certificate of occupancy could be held by one member or by a number of members, and if there is more than one it can be held as joint tenants or tenants in common.

52 A certificate of occupany should convey no other right of use or disposition except as provided in the Act.

Cancellation of Certificates or Memorandum

53 A certificate of occupancy or memorandum of allocation may be cancelled at any time by a council if

(a) the holder is no longer a member of the settlement;

(b) the land is not being used productively;

(c) the land is being used for a purpose detrimental to the well being of the settlement;

53. Existing legislation (AR 110/60, s.7) provides for cancellation of a certificate where a member is not cultivating or making proper use of the land.

(d) the holder is indebted to the settlement and has refused to pay after due process has established the debt; and

(e) the land is needed by the settlement for a public purpose.

This would permit cancellation for non-payment of levies.

The present Act and regulations do not provide the council with expropriation type of powers. That power is required if the council is to function as the local government of the settlement area.

The cancellation power provided for in the draft may only be exercised after due process in which the holder has a right to be heard by council and on appeal by a joint council and senate meeting. On cancellation the holder is entitled to fair compensation for improvements to, and equity in, the land. There should be a right of appeal on compensation issues similar to the loss of certificate recommendations.

54 Appropriate provisions for compensation would be required following non-voluntary cancellation of certificates of occupancy.

Rights of Residence

55(1) Notwithstanding anything else in the draft, if a non-Metis individual is married to and living with a member, and the member

55. This proposal is included to highlight a problem and is based on what appears to be a strong feeling on the settlements for the principle that a non-Metis, whether a spouse or otherwise, cannot become a member and so cannot become entitled to land allocation.

(a) dies;

(b) ceases to reside on the settlement; or

(c) is separated from the individual,

the Council may extend to the non-member the privilege of continuing to reside on the settlement.

(2) If the privilege of residence is withdrawn, the council should pay fair compensation to the individual for the equity in the matrimonal home and other improvements on the land.

(3) No new certificate of occupancy should be issued in respect of the land referred to in this section while the privilege of residence of the person continues.

In reality the argument is that because there would almost certainly be children involved, no action would be taken to remove anyone from the settlement. The Committee recognizes the problem but has some difficulty with a proposal which may take away rights under other legislation.

Division 3
Leases and Other Interests
in Settlement Land

56 Council may grant any lease, licence, easement, profit a prendre or other interest in land subject to restrictions as to term.

These recommendations blend the desire of the Committee to ensure that settlement lands remain under settlement control with the recognition that certain "non-members" must be situated on and have an interest in settlement lands. Further work is required to settle restrictions as to terms as between members and non-members.

In order to maintain the integrity of the geographical area and its use for the common purpose of maintaining the common Metis cultural identity, the council must have control of the granting of interests to non-members.

The settlements are linked by a common Settlement Resources Trust Fund administered by the Trustees. Since a long term lease of land could affect the revenues flowing to the common fund, and consequently other settlements, it is essential that the body responsible for administering the payments into and out of the fund have a say in arrangements between settlements and outside developers that can affect the inflow of funds. There may be cases when it is desirable to make a long term commitment of settlement land to facilitate a capital intensive project such as a producing oil well, compressor station, manufacturing plant, etc. In those cases the Trustees acting on behalf of all settlements could endorse the long term commitment of settlement lands.

Other Matters

57 The Act should continue the prohibition

(a) on taking real property on the settlement as security for or of placing any charge or lien in respect of the property, and

(b) on seizing the member's interest in land.

57 This proposal continues in effect section 18(1) of the existing Metis Betterment Act and the regulations. However, the Committee recommends that the prohibition in respect of property other than land in the existing Act not be continued.

Liens and charges will then be capable of being filed and enforced against personal property.

Settlement councils support this position.

58 There should be a greater latitude to dispose of interests in settlement land by will.

This is an area which clearly requires further discussion. The matter is presently covered by Alberta Regulation AR 110/60 s. 10-12.

Division 4
Right of Entry and Use
of Settlement Areas

59(1) No person other than a member shall enter or remain on a settlement area to do business or carry on work of any nature unless permitted to do so by the council.

(2) Subsection (1) does not apply to a Government official entering a settlement area in performance of his duties but the official must notify the council in advance of the nature of his activities.

59. This section is an effort to emulate the provisions of Alberta Regulation A.R. 116/60, s.5 and O.C. 481-40, s. 1 and 2 without including the permission of the Minister. It also attempts to clear up the present confusion as to whether the Metis Betterment Act or the Surface Rights Act has precedence on Metis lands.

It is felt that a high degree of local control of access to and use of land is essential to meet the goal of providing a land base on which the Metis can preserve a culture linked to their traditional hunting, fishing, trapping and gathering pursuits. Without the power to control, non-members could soon deplete those resources.

60(1) Subject to subsection (2), no person other than a member shall reside upon, occupy or use any land, including any road allowance, in a settlement area unless permitted to do so by the council.

(2) If a road crosses a settlement area and is used and required by the general public for that purpose, the Minister may by order declare the road a public road and any road so designated will be open to the general public for use as a public highway.

(3) The permission required from council by sections 59 and 60 may be granted by by-law or by the issuing of a permit.

61 In the event of any conflict between the provisions of this Division and the provisions of the Surface Rights Act the provisions of this Division prevail.

PART 6
FINANCIAL AND RESOURCES MATTERS

This Part deals with various financial matters including borrowing, budgets and the operation of the Metis Settlements Resources Trust Fund.

62 The financial year for settlements begins on April 1 and ends on the following March 31.

62 This is in accordance with current settlement practice.

63(1) A council may authorize the borrowing of any sum considered necessary to meet current operating expenditures and obligations of the settlement not exceeding the amount of revenues anticipated to be generated for the current year from their own sources.

(2) A councillor who votes to borrow a sum greater than that described in subsection (2) thereupon disqualifies himself from holding office on council and from holding office for the next 3 years.

(3) Subject to the approval of the Trustees, a council may borrow money to finance capital works and expenditures.

(4) No borrowing under subsection (1) unless the authorization is enacted by by-law and it receives the approval of a majority of the adult members who vote.

63 The provisions concerning borrowing for current and capital works parallel similar provisions in the Municipal Government Act.

Estimate of Expenditures

64(1) Each council should prepare a detailed estimate of the probable expenditures of the settlement for the following year, and the estimate shall include

The Committee proposed that settlement councils prepare estimates in much the same way as municipalities are required to do under the Municipal Taxation Act.

(a) sums that may be required to meet expenditures for ordinary settlement purposes, including repayment of principal and interest on borrowings;

(b) sums required to meet requisitions of any hospital district, school district or school division, pursuant to the School Act or Hospitals Act, as the case may be;

(c) sums required to meet the requisition of the Government under the School Act;

(d) sums liable to be paid under any Act of the Legislature;

(e) sums that may be required to meet contributions to any reserve fund.

(2) The council shall make an estimate of the probable revenue of the settlement for the year derived from:

(a) its own sources by levies, taxation and other local sources;

Subsection (1)(b) and (c) envisage settlements being placed in the same position as municipalities in terms of supplementary requisitions. The Committeee views this as a long term proposal which should not be implemented without discussion with the settlements and without resolution of the subsurface resource litigation.

Care should be taken to ensure that schools and hospitals do not have an immediate and automatic right to requisition.

(b) revenue received from non-members of the settlement;

(c) requisitions from the Trust Fund that are anticipated;

(d) any other source.

65 When an estimate of expenditures has been prepared it should be sent to the Trustees.

66 The Trustees shall call a meeting to discuss the estimates and seek a consensus as to the amounts required to be paid from the Trust Fund to each settlement.

67(1) Upon arriving at a consensus for payment from the Trust Fund, the Trustees shall advise the Minister of the needs of the settlements for the next financial year.

65. One of the purposes of establishing a requirement for estimates is to enable the Trustees to judge the needs of individual settlements.

The proposals for estimates will require detailed discussion between the Councils and the Government. These suggestions are offered as a guide or basis for further discussion.

(2) A discussion between the Minister or his representative and Trustees or their representatives concerning the sums that may be appropriated for the benefit of the settlements should then take place.

68 The Minister may make payments for the benefit of the settlements out of monies appropriated by the Legislature for that purpose.

Recognizing the various levels of development on the settlements it is necessary to include a provision which allows the Minister either to pay appropriated monies by grant directly to the settlements, to pay monies into the Trust Fund or to administer funds through the Metis Development Branch.

Metis Settlements Resources Trust Fund

69(1) There is hereby established a corporation called the Trustees of the Metis Settlements Resources Trust Fund composed of

(a) the chairmen of each Senate of Elders, and

(b) one additional person who shall be appointed by the councils for a 2 year term of office.

At present the Minister of Municipal Affairs is the Trustee of the Metis Population Betterment Trust Fund. The Committee believes that with the proposed move to local self-government it is no longer appropriate for the Minister to fulfill this role. Instead the Commitee recommends the creation of a corporate entity representing all the settlements and chaired by an appointee of the settlement councils. The Metis Settlements Resources Trust Fund replaces the present Metis Population Betterment Trust Fund as the common resource revenue fund shared by all Metis settlements. The settlements wish to share one common fund to avoid the problem of disparities between rich and poor settlements.

(2) The Trustees have the capacity and the rights, powers and privileges of a natural person.

(3) Each trustee holds office while he is chairman of the Senate of Elders of which he is a member.

(4) The Trustees shall meet at the call of the chairman.

70 There is hereby created a fund called the Metis Settlements Resources Trust Fund.

71(1) There shall be paid into the Trust Fund all monies accrued or accruing from settlement lands or resources in accordance with this section.

(2) For the time being, the same sources of revenue as exist under Alberta Regulation 112/60 and current surface rights policies should continue to be paid into the Trust Fund.

(3) Any change in the sources of revenue paid or payable into the Trust Fund must be approved by the Trustees and by at least 70% of councils who represent at least 70% of the adult members on all settlements.

The tax status of the existing Metis Betterment Population Trust Fund should be retained. This proposal will require review to ensure the status is maintained for the Trust Fund.

At present Alberta Regulation A.R. 112/60 provides for the payment to the Trust Fund of moneys from resource development activities in the settlement areas. The proposed section would not create an entitlement to resource related revenues beyond that provided for in section 44 of the draft. Rather it provides for the appropriation of certain of these revenues to the common Trust Fund.

This provision requires more discussion with the settlements prior to legislation being developed. The surface rights policies referred to are those currently agreed between the settlements and the Metis Development Branch.

This provision requires that change in the distribution of resource related revenues between the common fund and the local communities can only occur with broad based support from the settlements. This is a reflection of the current practice followed by the settlements in developing a common surface rights policy.

(4) Moneys in the Trust Fund shall be held on behalf of and for the benefit of the settlements.

72 If a council fails to pay all or part of monies into the Trust Fund in accordance with this Act or a resolution of the Trustees, the Trustees may refuse to pay all or part of the monies to the council that would otherwise have been paid to it.

This section enables the Trustees to collect at least some of the moneys payable to the Fund without taking legal action. It would not, however, enable the Trustees to immediately obtain all the moneys payable if a settlement misappropriated more than the amount of their annual allocation from the Fund.

73(1) The Trustees shall hold and administer the Trust Fund and may invest the monies in the Fund.

(2) All income from investments shall be paid into the fund.

(3) All expenses incurred by the Trustees shall be paid out of the Trust Fund.

74 Trustees shall provide the settlements with an annual audit of the Trust Fund.

75(1) Subject to subsection (2), no money shall be paid out of the Trust Fund unless

(a) the payment is approved or authorized by the Trustees, and

(b) at least 70% of the councils approve the payment.

(2) The councils, if at least 70% of them agree, may provide for some kinds of payments (perhaps described by amount or the kind of payment) to be paid without the approval required under subsection (1)(b).

76 At the request of the Trustees, the Minister may make an appointment or take any action that he is authorized to make or do under the Department of Municipal Affairs Act and that Act applies to the settlement as if it were a municipality under that Act.

This section enables the Trustees to enlist the Minister's assistance in ensuring proper financial administration by the settlements.

PART 7
LEGAL PROCEEDINGS

77 The Act should provide for protection from legal proceedings for councillors and expeditious legal proceedings in the same way municipalities are protected and permitted to take proceedings under the Municipal Government Act.

PART 8
TRANSITIONAL AND CONSEQUENTIAL PROVISIONS

78 Existing "settlement councils" will be considered to be councils under the new Act.

79 Some transitional provisions will be required to keep all existing councillors in office pending general elections under the regulations governing elections.

80(1) Certificates of occupancy issued under the former Act are deemed to be certificates issued under this Act.

(2) Other existing rights and interests in settlement land should be protected.

81 Allotments issued under the former Act are deemed to be memoranda of allocation under this Act and expire 5 years after the coming into force of this Act unless

(a) a council extends the period, or

(b) a certificate of occupancy is issued to replace the allocation.

82 The Metis Betterment Population Trust Fund shall be paid into the Metis Settlements Resources Trust Fund.

83 All other by-laws, resolutions, leases, permits, permissions, agreements or orders issued under the former Act by or for a settlement shall be deemed to be issued by the appropriate equivalent authority under this Act.

84 The existing Metis Betterment Act should be repealed, and the proposed Act should come into force, on Proclamation.

Schedule 1 of the
Metis Settlements Act

This Schedule will establish each of the eight existing settlements as corporate entities and prescribe their corporate names.

Schedule 2 of the
Metis Settlements Act

This Schedule will provide a land description for each of the eight existing Metis settlements.

Schedule 3
BY-LAW MAKING AUTHORITY

This Schedule will outline the detailed by-law making authority of the council. The Committee is of the opinion that the relevant section of the Municipal Government Act would, for the most part, provide a legislative precedent.

CHAPTER 4
POLICY RECOMMENDATIONS

The Committee felt that a new approach to the Metis settlements required not only a new Act but also a review by all Provincial Government Departments of their relationship with the settlements. This chapter is not intended to be exhaustive but it includes a number of issues which were raised with the Committee which are not appropriately handled by legislative change, but rather by policy review in order to fully implement them.

It should be emphasized however that the Committee does not intend that these matters should be dealt with in any way except by direct discussion between the concerned Departments and the settlement councils and their Federation. These issues are included in the Report to the Minister of Municipal Affairs so that he might advise his colleagues of the wide variety of settlement concerns.

1. Education

The Committee considered a variety of options and possible legislation before deciding to recommend that the Provincial Government take specific steps to ensure that all children in Alberta be provided with an opportunity to learn about Metis history and culture. The education system should be supportive of the distinct history and culture of the Metis people.

The Committee also recommends that a Metis be appointed or elected to the school authority for the area in which settlements are located. Local Advisory Committees should also include a Metis representative, and where schools are located on settlements, there should be settlement involvement in teacher appointments.

The Committee would support the notion of school on the settlement only when justified by the number of students in the locality.

2. Culture

It is recommended that the Minister responsible give direction to the Alberta Cultural Heritage Foundation and the Alberta Foundation for the Performing Arts to place greater emphasis on the development, recording and promotion of Metis history, culture and language (being a combination of Cree, French and English). The Committee recommends that the Provincial Government finance viable organizations, having the support of Metis people, the prime objective of which would be the preservation of history, language, music, dance, art and other aspects of Metis culture.

3. Social Services and Community Health

Included in the training of professionals and para-professionals should be some knowledge and sensitivity to Metis culture. In addition, workers on the settlements should not take action without prior consultation with the settlement council.

4. Energy and Natural Resources

Provincial programs for land and forestry development should include provisions to assist in development on Metis settlements.

5. Economic Development

It is recommended that the Departments of Economic Development, Agriculture, Tourism and Small Business, and Manpower undertake a comprehensive review of the economic development opportunities on and related to Metis settlements. The Metis Development Branch of the Department of Municipal Affairs has initiated some creative opportunities in the areas of forestry development and small business but clearly it has neither the resources nor the mandate to undertake the kind of analysis that is required. It is also a fundamental belief of the Committee that the experts of various Government Departments should work directly with Metis settlements rather than through any intermediary body.

6. General Programs

Recognizing the distinct nature of the settlements and the Metis, the Committee recommends that, as far as it is appropriate to do so, a settlement be treated by the Government, and its programs and policies, as any other municipality would be treated and thereby entitled to share in Provincially sponsored municipal programs and resources.

In particular the Committee recommends that municipal assistance grants should be considered as a major vehicle for grants to settlements that are capable of implementing full local government.

CHAPTER 5
CONCLUSION

In preparing its Report the Committee was guided by a number of assumptions, or underlying principles, that evolved from its dialogue with the Metis settlement people in the course of its work. These principles provide a framework for approaching the task of revising legislation and developing Government policy. We do not presume to tell the Government what it should do in these areas, but feel that our dialogue has given us a perspective that should be communicated.

We believe that in drafting legislation and developing policy related to the Metis, the following principles and assumptions should apply:

(1) the Metis represent a unique cultural group in Canada, an aboriginal people recognized in the Canadian Constitution, and a group that played a major role in the development of Western Canada;

(2) because the culture and lifestyle of the Metis settlements is inextricably linked to the land, a Metis settlement land base is the cornerstone on which to build and maintain the social, cultural and economic strength of the Metis settlers;

(3) given a unique culture and the land base of the Metis Settlement Areas, the Metis can best achieve the mutual goal of self-reliant integration, without homogenization, by a legislative framework enabling the maximum practicable local self-government of the land base;

(4) it would not be practical to include in Metis settlement local government the full scope of powers required to deal with all matters of health, education, social services and economic development, but even in these cases the uniqueness of the culture and its problem solving traditions should be respected by the Government bodies exercising the power.

The Committee has recommended legislative changes with these principles in mind. However it became apparent in the course of the Committee's work that many of the problems identified in community meetings are not best dealt with by changes in legislation. They raise questions of policy. These problems were primarily in the areas of education, and cultural and economic development. Rather than attempting to recommend changes in legislation other than the Metis Betterment Act in order to address the problems raised, the Committee has suggested in Chapter 4 some basic policy pronouncements for the Government's consideration as part of the "new deal" offered with new legislation.

CHAPTER 6
APPENDICES

Appendix 1 Order in Council establishing Joint Committee.

Appendix 2 Terms of Reference of the Joint Committee: Letter from Hon. Marvin Moore, April 2, 1982.

Appendix 3 Extension of time for Committee deliberations: Letter from Hon. Julian Koziak, March 23, 1984.

Appendix 4 A new Metis Betterment Act: A Guide for Discussion preprared by the Federation of Metis Settlements.

NOTE: A full set of the MacEwan Joint Committee minutes and attachments to minutes has been filed with the library of the Alberta Federation of Metis Settlements and the library of the Department of Municipal Affairs.

Alberta

ORDER IN COUNCIL

APPROVED AND ORDERED,

F. Lynch-Staunton

LIEUTENANT GOVERNOR

O.C. 422/82

MARCH 31, 1982

EDMONTON, ALBERTA

Upon the recommendation of the Honourable the Minister of Municipal Affairs, the Lieutenant Governor in Council makes the order in the attached Appendix, being the Joint Committee to Review the Metis Betterment Act and Regulations Order.

CHAIRMAN

APPENDIX 1
ORDER IN COUNCIL NO. O.C. 422/82

APPENDIX

JOINT COMMITTEE TO REVIEW THE METIS BETTERMENT ACT AND REGULATIONS ORDER

1 A Joint Committee, in this Order called the "Committee", is hereby established to act in an advisory capacity and in particular to review the Metis Betterment Act and Regulations and make recommendations to the Minister of Municipal Affairs which would allow for political, social, cultural and economic development on Metis Settlements.

2 The Committee shall consist of the following members:

(a) Honourable Dr. Grant MacEwan who shall be Chairman;

(b) Mrs. Myrna Fyfe, M.L.A.;

(c) a representative designated by the Minister of Municipal Affairs; and

(d) two representatives designated by the Metis Settlements.

3(1) Members of the Committee other than employees of the Government or members of the Legislative Assembly shall be paid remuneration and expenses at the rates set out in Schedule 2 Part A of the Committee Remuneration Order being Order in Council numbered O.C. 1175/80.

(2) Pursuant to section 12(2) (a) of the Legislative Assembly Act, Mrs. Myrna Fyfe, M.L.A., is authorized to accept reasonable travelling expenses incurred as a member of the Committee.

4 The Minister of Municipal Affairs shall establish the terms of reference for the Committee.

5 The deliberations and recommendations of the Committee shall be without prejudice to the following matters currently before the courts, namely Maurice L'Hirondelle et al and Her Majesty the Queen in right of Alberta as represented by the Minister of Social Services and Community Health; also The Keg River Settlement Association et al and Her Majesty the Queen in right of Alberta as represented by the Minister of Social Services and Community Health.

APPENDIX 2

TERMS OF REFERENCE OF THE JOINT COMMITTEE

Alberta

MUNICIPAL AFFAIRS

403/427-3744

Office of
the Minister

423 Legislative Building
Edmonton, Alberta, Canada
T5K 2B6

April 2nd, 1982

Dr. Grant MacEwan
Chairman
Joint Metis Betterment Committee
132 Hallbrook Drive S.W.
CALGARY, Alberta
T2V 3H6

Dear Dr. MacEwan:

I am pleased to thank you once again for your willingness to chair the Joint Committe for a Review of the Metis Betterment Act and Regulations.

Cabinet approved the O/C establishing the Committee on March 30th, 1982, and in accordance with that O/C I have established the following as the Committee's Terms of Reference:

A. Purpose

The Joint Committee is established to act in an advisory capacity and in particular to review The Metis Betterment Act and Regulations and make recommendations which would allow for political, cultural, social and economic development on Metis Settlements.

B. Organization of the Committee

1. a) The Committee shall consist of the following members:
   (i) Honourable Dr. Grant MacEwan who shall be Chairman;
   (ii) Mr. Elmer Ghostkeeper and Mr. Maurice L'Hirondelle, designated by the Metis Settlements;
   (iii) Mrs. Myrna Fyfe, M.L.A.;
   (iv) Mr. Robin Ford, designated for the Department.

2. a) In the absence of the Chairman at a meeting, the members present shall appoint a Chairman to preside at that meeting.

   b) The Committee may make rules governing the calling of and conduct of meetings and any other matters pertaining to its business and affairs.

   c) The Committee will be provided with a secretary (Mrs. M. Lee) to record proceedings, undertake basic administrative duties and perform all other duties of a secretarial nature.

.....2

3. The Committee will after consultation with the Metis Settlements submit to me as Minister of Municipal Affairs a final report and its recommendations within two years. Copies of the report will be made available to the Metis Settlements.

4. a) The members of the Committee who are not employees of the government may be paid for their services, at the rates prescribed in Schedule 2 Part "A" of the Committee Remuneration Order, being Order-in-Council No. 1175/80, as amended by O/C 40/81.

   b) The members of the Committee shall be paid travelling and living expenses in accordance with the Regulations governing the payment of Subsistence and Travelling Allowances as set out in Oder-in-Council No. 293/79, while absent from their ordinary place of residence in the course of their duties as members of the Committee.

   c) Mrs. Myrna Fyfe, as a member of the Legislative Assembly is authorized to accept reasonable travelling and living expenses as prescribed herein while serving as a member of the Committee.

5. The Department of Municipal Affairs will provide funds to meet the costs related to meeting places and secretarial services.

6. The deliberations and recommendations of the Committee shall be without prejudice to the matters concurrently before the courts.

C. Work Program for the Committee

The Committee shall undertake the following work program:

1. A review of background material;
2. A detailed examination of the Metis Betterment Act and Regulations;
3. A review of the current political, health, educational, cultural and economic situation on the Metis Settlements;
4. An examination of future alternatives for Metis Settlements;
5. The development of models in terms of local government, land holding, social organization and economic opportunity on Metis Settlements;
6. The establishment of guiding principles for the drafting of legislation which would allow for political, cultural, social and economic development on Metis Settlements;
7. A review of draft legislation; and
8. The preparation of a final report to the Minister.

I understand that the above were acceptable to members of the above Committee meeting informally on February 23rd, 1982.

May I wish you every success in your challenging and historical task.

Yours sincerely,

MARVIN E. MOORE
Minister of Municipal Affairs

c.c. Committee Members

APPENDIX 3

Extension of time.

Alberta
MUNICIPAL AFFAIRS

Office of the Minister

224 Legislature Building, Edmonton, Alberta, Canada T5K 2B6 403/427-3744

March 23, 1984

Dr. Grant MacEwan, Chairman
Joint Metis Betterment Committee
132 Hallbrook Drive S.W.
Calgary, Alberta
T2V 3H6

Dear Dr. MacEwan

In reply to your February 22, 1984, letter, I would agree to an extension to June 30, 1984, for the submission of the final report concerning the review of the Metis Betterment Act and Regulations.

As Minister of Municipal Affairs, I greatly appreciate the work you and your committee have been carrying out in this regard. It is a difficult and time-consuming task with which your committee has been charged, and I fully appreciate that it may take longer than anticipated for the final report to be completed.

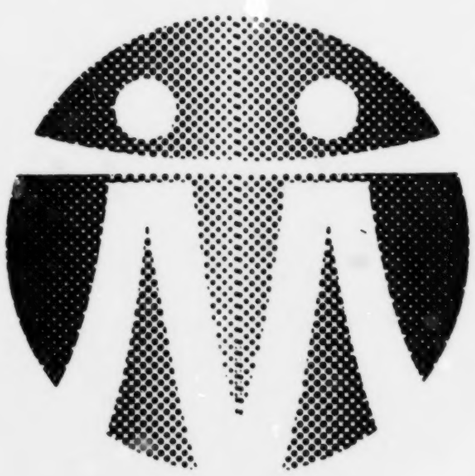
Yours truly

Julian Koziak, Q.C.
Minister

cc: J. Thompson, MLA

A NEW METIS BETTERMENT ACT

A Guide For Discussion



ALBERTA FEDERATION OF METIS SETTLEMENT ASSOCIATIONS

(Prepared by the Federation of Metis Settlements)

WHAT IS THE METIS BETTERMENT ACT? HOW DOES IT AFFECT YOU?

The Metis Betterment Act is a provincial law which established the Metis Settlements. In the 1930s, the Metis people were landless everywhere on the prairies. In Alberta, the Metis people organized and put pressure on the provincial government to give them a landbase. Following the recommendations of a government report on the needs of the Metis (Ewing Commission), the Metis Betterment Act was passed in 1938. It set aside land for Metis and provided for the establishment of Settlement Associations to occupy the land.

The Metis Betterment Act has a great influence on the lives of Metis settlers. Besides setting aside land for the settlement it also created a system of local government in the form of Settlement Association Councils, each consisting of five members. These Councils have the power to enforce the rules and regulations in the Metis Betterment Act affecting land allotment, membership, hunting, fishing and trapping, timber, grazing, surface rights, and the administration of funds.

In other words the Councils make important decisions affecting you on a daily basis.

WHY SHOULD THERE BE A NEW METIS BETTERMENT ACT?

In recent years it has become clear that if we are to gain control over our lives and our future, we must strenghten our local governments, and no longer be governed by a branch of the government over which we have no control.

HOW WILL THE METIS BETTERMENT ACT BE RE-WRITTEN?

Originally the Metis Betterment Act resulted from negotiations between the Government of Alberta and the elected representatives of the Metis people. However, since 1938, many changes have been made to the Metis Betterment Act without our involvement and consent. One of the important changes made without our consent was the definition of Metis to be used in determining membership. Whereas the original Metis Betterment Act identified a Metis person as anyone with mixed White and Indian blood, over the years, a new definition has been inserted into the Act, identifying a Metis as a person with not less than one-quarter Indian blood. With changes to the Metis Betterment Act today, we insist on being fully and equally involved in the process.

On March 31, 1982, the Government of Alberta established a Joint Committee to Review the Metis Betterment Act and Regulations. This committee consists of two representatives from the Federation of Metis Settlements, two from the provincial government, and a Chairman who is acceptable to both the Federation and the provincial government. The Committee was set up for a two-year period after which it will make its recommendations to the Minister of Municipal Affairs. These recommendations will form the basis of the new Act. The Joint Committee has visited all the Metis Settlements, to speak to the Councils and to make the Committee members familiar with life on the Settlements.

At the same time, the Federation of Metis Settlements is attempting to canvass the views of Metis settlers on what a new Metis Betterment Act should contain. This will be done by means of workshops, where answers will be gathered to specific questions relating to a new Metis Betterment Act.

WHAT IS THE CONNECTION BETWEEN THE FEDERATION'S POSITION ON ABORIGINAL RIGHTS IN THE CONSTITUTION (METISISM) AND A NEW BETTERMENT ACT?

The Canadian Constitution is the highest law of the land. It states the principles on which different groups of people decide to come together to form a country and spells out how the country is to be governed.

In "Metisism", the Federation of Metis Settlements called for the entrenchment of Metis rights in the Constitution , the right to land and resources, to a distinct political status, and to their own social, cultural, and economic development. We would like to see a new Metis Betterment Act implement those aboriginal rights at the provincial level. For example, the Federation has called for a guarantee for the right of aboriginal peoples to local government in the Constitution. A new Metis Betterment Act could implement this constitutional provision by transferring the powers of administration of the Settlements from the Metis Development Branch to local Settlement Councils. A new Metis Betterment Act could also transfer regulatory powers currently held by the Minister to the Councils.

While you are thinking about how to change the Metis Betterment Act, you should bear in mind how important it is for our rights to be built into the Constitution. To repeat what we said earlier, the Constitution is the highest law in the land. It has priority over federal and provincial laws. That means that if our aboriginal rights, let's say hunting and fishing rights, were entrenched in the Constitution, neither the federal nor provincial government could make a law that would deny us these rights. Likewise, if a federal or provincial law already existed which contradicted our aboriginal right it would be struck down by the courts.

Therefore it is important for us to have our rights recognized in the Constitution of Canada and to have these rights implemented by a provincial law, the Metis Betterment Act.

QUESTIONS FOR THE WORKSHOPS

LAND AND RESOURCES

Land allotment

1) According to Alberta regulation 110/60 of the Metis Betterment Act an individual, within 90 days of gaining membership in a Metis Settlement Association, must apply for land. If this person fails to make specified improvements (cultivation of land, erection of buildings, etc...) his application can be cancelled. Do you agree with this regulation? If not, do you believe other conditions should be imposed on new settlers?

2) If a person fulfills the improvements he is given a certificate of occupancy which confirms his right to use the land. However, if this person fails to cultivate the land fails to pay levy on the land, his certificate of occupancy may be cancelled. Do you agree with this? If not, do you think other conditions should be attached to landholding?

3) Should there be a limit on the amount of land an individual can hold on a Metis Settlement?

Renewable resources

1) According to the Metis Betterment Act the Minister charged with the administration of the Act may make regulations concerning:

a) the right to hunt, fish, trap on Settlements,
b) the cutting of timber on Settlements including the amount of timber that may be cut,
c) the manner in which land is assigned to members of a Settlement Association.

Should these regulatory powers be transferred to the Councils? Should conservation measures be adopted for wildlife on the Settlements? If so, who should be responsible for making conservation regulations?

Non-renewable resources

1) According to Alberta regulation 112/60 all money derived from the sale of natural resources, permits and leases is to be deposited in a Metis Population Betterment Trust Account which is held by the Provincial Treasurer on behalf of the Settlement Associations. The Minister of Municipal Affairs is responsible for the management of the Trust fund. Do you believe that the government of Alberta should manage our funds? If not, who do you think should hold and manage our Trust fund:

a) Federation?
b) Settlement Sooniyaw Corporation?
c) Councils?

Local Government

1) According to Alberta regulation 634/57 the affairs and business of the Associations shall be transacted by a Council consisting of not more than five members. Generally the Chairman of each Settlement has been appointed by Council rather than being directly elected by the members. Do you think your Council should have:

a) more members?
b) fewer members?
c) the same number? Why?

Do you feel the Chairman of each Council should be directly elected rather than being appointed?

2) Do you feel your Councils meet often enough to fulfill their duties?

3) How much of an honorarium should members of Councils receive for attending Council and general meetings or performing other Settlement business?

4) Should members of Council draw salaries? If so, how much?

5) Should Council members be fully reimbursed for their travel expenses while on Settlement business?

6) If Settlement Associations are to gain more powers of local government, they will need authorities to protect individuals from an abuse of power. It has been suggested that each Settlement establish a tribunal consisting of notable individuals such as our Elders to make judgements on disputes arising out of membership, land allotment, etc... In other words the tribunal would serve as a court of appeal. What do you think of this idea?

7) The Federation has proposed a schedule be worked out for the transfer of powers from the Metis Development Branch to Councils. According to this plan the Councils would be free to deal with government departments on practical matters, while the Federation would assume responsibility for dealing with the provincial government on policy matters affecting all Settlements. What do you think of this proposal? Do you feel that the Metis Development Branch should retain some responsibility for Metis Settlements? If so, which?

8) In order to perform its functions and deliver services, local governments need a revenue base. Most turn to taxation as a source of revenue. Metis Settlements generate their revenues through a small levy and through the collection of fees and licenses and surface rights. Recently the Metis Development Branch attempted a new user pay policy by which the individuals users of services such as water wells would have to share the cost of these services. Some people would argue that whatever costs resulting from the provision of services should be paid for by the Councils rather than individuals. They point out that since our communities are collectively organized, our local governments should be responsible for fulfilling the needs of the collectivity. Do you feel that individuals or Councils should be responsible for paying these services? Why?

9) The Federation has stated that even through the land and resources on Metis Settlements are to be exempt from taxation by other levels of government, the local governments or Councils should be able to collect levies and to enter into cost-sharing agreements for services with the province as do other local governments. What do you think of this position?

Identity and Membership

1) According to Alberta regulation 634/57, those eligible to become members of a Metis Settlement Association must be:

a) a Metis,
b) at least 18 years of age,
c) a resident of Alberta for at least five years prior to application.

Do you think these membership qualifications are fair? If not, which of the qualifications do you object to and why? Do you think additional qualifications for membership should be used?

2) In the event of a Metis marrying a non-Metis, do you feel that the non-Metis spouse should be eligible for membership in a Metis Settlement Association?

3) Do you feel that membership in a Settlement Association should be tied to occupation and use of land?

A name for a new act

1) Now that you have reviewed the Metis Betterment Act and discussed changes to it, what do you think the name of the new legislation for our Settlements should be:

- Metis Settlements Act?
- Metis Development Act?
- Metis Settlements Rights Act?
- Other?

2) Do you think our Settlement Association should be renamed, perhaps to Metis Local Governments or to Metis Settlement Corporations? What do you think?

3) Should there be a new name for Metis Settlements, perhaps to Metis Districts or Metis Regions? Suggestions?